

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT PETITION OF AMERICAN)
NATURAL GAS CORPORATION AND)
NATURAL ENERGY UTILITY) CASE NO. 2002-00050
CORPORATION FOR APPROVAL OF)
TRANSFER OF ASSETS)

ORDER

On February 14, 2002, American Natural Gas Corporation (ANG) and Natural Energy Utility Corporation (NEUC) (collectively the Joint Applicants) applied for Commission approval of NEUC s purchase of ANG s natural gas distribution assets. On March 15, 2002, Commission Staff issued a data request to which Joint Applicants filed responses on March 29, 2002.

Having considered the application and being otherwise sufficiently advised, the Commission finds that:

1. ANG, a Delaware corporation, owns and operates a natural gas local distribution system serving approximately 900 customers in Boyd and Greenup counties in Kentucky. Its business address is 2560 Hoods Creek Pike, Ashland, Kentucky 41102.

2. NEUC, a Kentucky corporation, was created for the purpose of acquiring the assets of ANG. Its business address is 2636 Algonquin Avenue, Ashland, Kentucky 41102. H. Jay Freeman holds 800 of the authorized 1,000 shares of common stock while 100 shares are held by Bill B. and Carole J. Hinkle Revocable Trust, Bill B. and

Carole J. Hinkle Trustees, and 100 shares are held by Richard L. and Judy L. Hinkle, JTWROS.

3. On January 11, 2002, the Joint Applicants executed an Asset Purchase Agreement (the Agreement) which provides for the transfer to NEUC of all pipelines, equipment, easements, customers and all related assets, rights, and privileges. It further provides that the only liabilities NEUC will assume are the imbalance associated with the agreement between ANG and Columbia Gas Transmission Corporation (Columbia GTC) dated November 7, 2000, and the remaining payments on two vehicles as well as the associated liability insurance on the vehicles. The Agreement provides that NEUC will pay a purchase price of \$2,200,000.

4. In response to Commission Staff s data request, the Joint Applicants state that ANG s customer deposit liability and related accrued interest liability will be transferred to NEUC. ANG will provide NEUC with an amount of cash equal to the customer deposit liability and related accrued interest liability that is transferred to NEUC.

5. NEUC will finance the asset purchase with a \$2,100,000 loan from Classic Bank. NEUC has applied for and has received a conditional commitment for a loan guarantee through the United States Department of Agriculture Rural Business Cooperative Service (USDA). NEUC should provide the Commission with copies of the signed loan agreement with Classic Bank and the final loan guarantee with USDA upon the finalization of those documents.

6. NEUC is not seeking a rate adjustment as a result of the transfer.

7. NEUC's president, H. Jay Freeman, has managed ANG for the last 12 years.

8. NEUC will operate with ANG's existing personnel.

9. In its 2001 annual report, ANG reported utility plant in service of \$7,594,822 and accumulated depreciation of \$3,189,834 for a net book value of \$4,404,988.

10. In its 2001 annual report, ANG reported operating revenues of \$2,111,592 and operating expenses of \$1,878,756 for a net operating income of \$232,836.

11. The purchase price appears to be below the net book value of the purchased assets. When this occurs, the difference between the purchase price and the net book value (and taking into consideration liabilities assumed) is accounted for as a credit to Account No. 114, Gas Plant Acquisition Adjustments. This acquisition adjustment account should be amortized over the estimated remaining useful life of the plant purchased by debiting Account No. 114 and crediting Account No. 406, Amortization of Gas Plant Acquisition Adjustments each year for the annual amortization. The annual amortization should be recognized for rate-making purposes in future rate cases filed by NEUC. NEUC should begin to amortize the acquisition adjustment in its first financial reporting period.

12. In response to Commission Staff's data request, the Joint Applicants provided sample accounting entries to record the asset sale by ANG and the asset purchase by NEUC. The sample entries for NEUC included the written down balances for the utility plant to be purchased from ANG. The sample entries for NEUC also did not include the effects of the transfer of the Columbia GTC liability nor the vehicle

liabilities from ANG to NEUC. In order to properly record the asset purchase and liability assumption by NEUC in accordance with the Uniform System of Accounts, NEUC should contact the Commission Staff for assistance in developing these initial accounting entries.

13. In response to Commission Staff's data request, the Joint Applicants provided a copy of the loan agreement with Classic Bank. Included in the loan agreement are provisions that limit the salaries of the president and treasurer/CFO of NEUC. The Commission's approval of this transfer should not be viewed as determining that these salary limits are reasonable or acceptable for ratemaking purposes. In future rate cases, NEUC should be prepared to justify the reasonableness of all salaries paid to its officers and employees.

Based upon these findings, the Commission makes the following conclusions of law:

1. ANG is a utility that is subject to Commission jurisdiction.
2. KRS 278.020(4) provides:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

3. KRS 278.020(5) provides:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an acquirer), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. The

commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.

4. NEUC has the financial, technical, and managerial abilities to provide reasonable utility service to those persons that ANG currently serves.

5. The proposed transfer is in accordance with law, is for a proper purpose, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of assets from ANG to NEUC is approved.

2. The terms and conditions contained in the loan agreement between NEUC and Classic Bank, as stated in this record, are approved.

3. Within 10 days of completion of the proposed transfer of assets, ANG and NEUC shall notify the Commission in writing of the completion of the transfer.

4. Within 10 days of the completion of the transfer, NEUC shall contact the Commission Staff to obtain assistance with the preparation of the journal entries used to record the purchase. Within 30 days of the completion of the transfer, NEUC shall file with the Commission its journal entries used to record the purchase.

5. Within 10 days of the completion of the transfer, NEUC shall file with the Commission an adoption notice, conforming to the requirements of Administrative Regulation 807 KAR 5:011, Section 15(6). In this notice, NEUC shall adopt and ratify as its own all of ANG's rates, rules, classifications, and administrative regulations on file with the Commission and effective at the time of the transfer.

6. Within 10 days after filing of its adoption notice with the Commission, NEUC shall issue and file in its own name ANG's tariff or such other tariff as it proposes

to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011.

7. ANG shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2002 it owned and operated the transferred assets.

8. NEUC shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2002 it owns and operates the transferred assets.

9. NEUC shall file copies of the executed loan agreement with Classic Bank and the final loan guarantee by the USDA within 10 days of the finalization of the documents.

10. Commission approval of the proposed transfer shall not be considered as approval of the level of salaries and other expenses projected by NEUC in this case.

Nothing contained herein shall be construed as a finding of value for any purpose or as warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 10th day of April, 2002.

By the Commission

ATTEST:


Executive Director